Supreme Court, U. S.
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No. 80-115

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

THE HOUSING AUTHORITY OF THE CITY OF INDIANAPOLIS, INDIANA,

Petitioner,

vs.

BOARD OF SCHOOL COMMISSIONERS OF THE CITY OF INDIANAPOLIS, INDIANA, et al.; DONNY BRURELL BUCKLEY and ALYCIA MARQUESE BUCKLEY, by their parent and next friend, Ruby L. Buckley, on behalf of themselves and all Negro school age children residing in the area served by the original defendants; UNITED STATES OF AMERICA; THE METROPOLITAN SCHOOL DISTRICT OF DECATUR TOWNSHIP, MARION COUNTY, INDIANA; THE FRANKLIN TOWNSHIP COMMUNITY SCHOOL CORPORATION, MARION COUNTY, INDIANA; THE METROPOLITAN SCHOOL DISTRICT OF LAWRENCE TOWNSHIP, MARION COUNTY, INDIANA; THE METROPOLITAN SCHOOL DISTRICT OF PERRY TOWNSHIP, MARION COUNTY, INDIANA; THE METROPOLITAN SCHOOL DISTRICT OF WARREN TOWNSHIP, MARION COUNTY, INDIANA; THE METROPOLITAN SCHOOL DISTRICT OF WAYNE TOWNSHIP, MARION COUNTY, INDIANA; THE METROPOLITAN SCHOOL DISTRICT OF WASHINGTON TOWNSHIP, MARION COUNTY, INDIANA; THE SCHOOL DISTRICT OF BEECH GROVE, MARION COUNTY, INDIANA; THE SCHOOL TOWN OF SPEEDWAY, MARION COUNTY, INDIANA; OTIS R. BOWEN, as Governor of the State of Indiana; THEODORE SENDAK, as Attorney General of the State of Indiana; HAROLD H. NEGLEY, as Superintendent of Public Instruction of the State of Indiana; THE INDIANA STATE BOARD OF EDUCATION, a public corporate body; INDIANA STATE TEACHERS ASSOCIATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

WILLIAM M. EVANS,
ROBERT P. KASSING,
BOSE, MCKINNEY & EVANS,
1100 First Federal Building,
Indianapolis, Indiana 46204,
Attorneys for Petitioner The Housing Authority of the City of Indianapolis, Indiana.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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Petitioner prays that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on April 29, 1980.

QUESTIONS PRESENTED

1. (a) Did the Court of Appeals, Judge Tone dissenting, fail to follow *Washington* v. *Davis*, 426 U. S. 229 (1976) and *Village of Arlington Heights* v. *Metropolitan Development Corporation*, 429 U. S. 252 (1977) in determining that the Housing Authority of the City of Indianapolis (HACI) acted with a discriminatory racial purpose to violate the Fourteenth Amendment right of minority black students to attend a unitary school system merely by the act of placing its public housing

units within the more demographically black City of Indianapolis rather than in the surrounding suburban areas in Marion County.

(b) Does it make any difference in establishing discriminatory intent or a significant interdistrict segregative effect in the location of public housing that it was located in both black and white demographic areas and did not increase the number of black students in the Indianapolis public school district, or under *James* v. *Valtierra,* 402 U. S. 137 (1971), that the Housing Authority had no ability under Federal law to locate public housing in the other districts because Marion County civil government officials with jurisdiction over the suburban areas outside Indianapolis were unwilling or unable to enter into the cooperation agreements necessary to Federal financing?

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OPINIONS BELOW

The opinions below on which this appeal is based are in chronological order, as follows:

Opinion of the United States District Court for the Southern District of Indiana ("District Court"), dated August 1, 1975. (419 F. Supp. 180; SA 36)[1]

Majority and dissenting opinions of the United States Court of Appeals for the Seventh Circuit ("Court of Appeals"), dated July 16, 1976, affirming the District Court, which were appealed to this Court or subject to petitions for certiorari and were remanded by this Court, 429 U. S. 1068 (1977). (541 F. 2d 1211; SA 1)

Principal, concurring and dissenting opinions of the Court of Appeals, dated February 14, 1978, remanding the case to the District Court. (573 F. 2d 400; JA 54-83)

Opinion of the District Court on remand, dated July 11, 1978 (456 F. Supp. 183; JA 84-100).

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1. Petitioners hereby adopt the separately bound Joint Appendix, previously filed in this Court with petitions for certiorari to the United States Court of Appeals for the Seventh Circuit from the same judgment entered April 29, 1980, by The Metropolitan School District of Perry Township, Marion County, Indiana, and Otis R. Bowen, Governor of Indiana, and other State officials and the separately bound Supplemental Appendix previously filed with this Court with Petitions for Certiorari to the United States Court of Appeals for the Seventh Circuit from this same judgment entered April 29, 1980, by the Metropolitan School Districts of Lawrence, Warren and Wayne Townships, Marion County, Indiana; the Metropolitan School District of Decatur Township, Marion County, Indiana, and the Franklin Township Community School Corporation, Marion County, Indiana, Cause No. 79-2067. Petitioner hereby also adopts the Appendix previously filed with this Court with the Petition for Certiorari to the United States Court of Appeals for the Seventh Circuit from the judgment of the Court of Appeals for the Seventh Circuit entered July 16, 1976 by HACI, filed with this Court on October 14, 1976, Cause No. 76-522. All parties were parties at the time of this 1976 Petition. These appendices will be cited as "JA", "SA", and "HACIA", respectively.

Opinion of the District Court on additional limited remand related to remedy, dated April 24, 1979, as yet unreported. (JA 101-129)

Majority and dissenting opinions of the Court of Appeals, dated April 29, 1980, as yet unreported, which are the subject of this appeal. (JA 1-53)

JURISDICTION

The judgment and opinion of the Court of Appeals sought to be reviewed by this petition were dated and entered April 29, 1980. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

This case involves the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, which reads as follows:

> Section 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The statutes and regulations involved in the Court of Appeals holding that the locating of all public housing projects within the area served by the Indianapolis Public Schools was a constitutional violation warranting an interdistrict school desegregation remedy are: Indiana Acts 1937, Ch. 207, pp. 1034-1055 (Housing Authority Act), as amended by Indiana Acts 1965, Ch. 384, pp. 1185-1192 (JA 168); Indiana Acts 1937, Ch. 209, pp. 1058-1063 (Housing Cooperation Act) (JA 168-169); the United States Housing Act of 1937, as amended, 42 U. S. C. § 1415 (JA 169-170); and the Project Selection Criteria of HUD (24 C. F. R. § 200.700, et seq.) (1972) (HACIA 61).

The statutes cited above are set out in pertinent part in the Joint Appendix or the Supplemental Appendix or the HACI Appendix at the pages indicated.[2]

STATEMENT OF THE CASE

The United States commenced this action in the United States District Court for the Southern District of Indiana, in May, 1968, under §§ 407(a) and (b) of the Civil Rights Act of 1964, 42 U. S. C. §§ 2000c-6(a) and (b), against The Board of School Commissioners of the City of Indianapolis, Indiana (IPS), an independent governmental entity as the only defendant. The "sole issue" was racial segregation within the IPS schools, and after hearing, the District Court entered an order in 1971, finding that IPS was ". . . operating a segregated school system wherein segregation was imposed and enforced by operation of law, . . ." (332 F. Supp. 655, at 677-78). This judgment was affirmed by the Court of Appeals for the Seventh Circuit (474 F. 2d 81 (1974)); certiorari was denied (413 U. S. 920 (1974)).

In its 1971 opinion, the District Court made its own analysis of the effect of the location of public housing projects on the racial composition of the schools in IPS, as follows (332 F. Supp. 655, at 673-674):

> "B. Low-Rent Housing Projects
>
> Low-rent housing projects within the School City have significantly affected the racial composition of the schools. A project typical of this kind is constructed at the periphery of an established Negro residential area and, for that reason

2. Through 1969, Indiana session laws are printed and cited by the year adopted as a "chapter". Permanent statutes were codified as of the beginning of Indiana's 1971 legislative session as "Indiana Code, 1971". The 1971 Code, as amended through 1975, was readopted in 1976 as a restatement of Indiana law entitled "Indiana Code" and cited "IC .....". Session laws are set out in both Appendices to reflect the applicable wording in 1969 and prior years.

among others, attracts a Negro occupancy, which is eventually reflected in the racial composition of the school that serves the area in which the project is situated.

Such an effect is to be seen in several elementary schools, including: School 67, in which Negroes constituted 4% of the student body in 1968-69 and 30.9% in 1970-71, owing to the opening of Eagle Creek Village at Tibbs Avenue and Cossell Road; School 112, in which Negroes constituted 13.7% of the student body in 1968-69 and 42.9% in 1970-71, owing to the opening of Raymond Villa, at Raymond Avenue and Perkins Street; School 71, in which Negroes constituted 10.8% of the student body in 1965-66 and 92.6% in 1970-71, owing to the opening of Hawthorne Place at 32nd Street and Emerson Avenue; and School 99, in which there were no Negro students in 1968-69 and in which Negroes constituted 33.9% of the student body at the end of the 1970-71 school years, owing to the opening of Beechwood Gardens at 30th Street and Graham Avenue.

Housing projects of the kind just described not only have racial consequences for the schools; each of them tends to represent, as well, a demand for a significant amount of school space. Eagle Creek Village, Raymond Villa, and Beechwood Gardens necessitated additions to Schools 67, 112, and 99, respectively, each of which cost about $1,300,000. Salem Village, at 30th Street and Baltimore Avenue, necessitated the construction of a complete school (School 110), which has served a virtually all-black student body since it was opened in 1966.[81]"

"81. The plaintiff United States of America, which of course sponsors federally supported housing projects, has suggested a finding that the locations of six of the ten projects opened in the School City since 1965 have tended to promote integration in those instances. There is insufficient evidence to support such a finding."

The District Court then postulated seven questions it deemed necessary to remedy this IPS constitutional violation. The seventh question may have involved HACI, as follows (*Id.* at 679):

> "7. Does this Court have the power to override rulings of the said Development Commission or of any other involved agencies with regard to the location of low-rent housing projects, if it finds that the locations of such projects interfere with desegregation, or tend to cause resegregation?"

The District Court ordered IPS to join as third party defendants the "agencies which would appear to have an interest" in this question.

In accordance with this order, on September 29, 1971, IPS filed a cross-claim against HACI and other agencies, asking only for declaratory relief as to the obligation of HACI to give significant weight to the effect of the location of housing projects on the racial composition of the schools in the neighborhood, and its obligation to maintain racially balanced housing projects.

Earlier, on September 7, 1971, the United States moved to have certain school corporations added as additional party defendants, but not HACI. The United States has never, then, or later, filed a complaint or asserted any claim for relief against HACI.

On September 14, 1971, the District Court allowed Donney Brurell Buckley and Alycia Marquese Buckley to intervene as plaintiffs representing a class of school age Negro children and to file a complaint seeking relief against the added defendant school corporations. Jurisdiction was based on 42 U. S. C. § 1983 and 28 U. S. C. § 1343(3). By an amended complaint filed October 21, 1971, appellees Buckley, brought into the action as added defendants, Indiana's Governor, Attorney General, Superintendent of Public Instruction and State Board of Education, and nineteen suburban school corporations, but did not name HACI as an additional defendant, and did not assert any claim against it. The case against these added school corporation defendants, framed by the issues set out in this amended complaint and answer to it, was tried in the District Court in June and July, 1973. On July 20, 1973, the District Court

filed its Memorandum of Decision (386 F. Supp. 1191) ordering interim inter-district relief involving the school districts both in Marion and surrounding counties, but not referring to HACI in anyway.

An appeal was taken from this judgment to the Court of Appeals which entered its decision on August 21, 1974 (503 F. 2d 68).

The District Court after remand, on December 13, 1974, made a pre-trial entry setting out the issues to be tried, as follows:

> "2. After discussion, the Court stated that the remaining issues appeared to be, at a minimum, the following: (a) The *effect, if any,* of the passage of the 'Uni-Gov' Act in perpetuating de jure segregation within the boundaries of IPS, and (b) the *effect, if any,* of housing and zoning laws, rules, regulations, and customs in Marion County, Indiana, and its various political subdivisions upon the de jure segregation of IPS." (Emphasis added.)

Since the statement of issues filed by the parties contained no specific charge against HACI, the record is almost devoid of any reference to HACI, and what is there was placed in evidence largely by HACI officials.

This case, on remand, was tried in the District Court in March, 1975. The District Court filed its Memorandum of Decision on August 1, 1975. With respect to the housing issue, the District Court held:

> "The evidence is undisputed that each and every public housing project constructed and operated by the added defendant HACI is located within IPS territory, in some instances just across the street from territory served by one of the added defendant school corporations. Each of such locations was approved—in some instances selected in the first place—by the added defendant Commission. The latter institution has had county-wide zoning jurisdiction at all times during the construction of 10 out of the 11 public housing projects for families, and HACI has at all times

> had the authority to erect public housing within the City of Indianapolis, and within five miles of the corporate limits of such city. The residents of said public housing projects are approximately 98% black (except in projects for the elderly), and their children all attend school in IPS. The location of these housing projects by instrumentalities of the State of Indiana has obviously tended to cause and to perpetuate the segregation of black pupils in IPS territory". (SA 39)

With respect to remedy, it also made a series of additional findings reminiscent of its 1971 and 1973 opinions on racial imbalance between IPS and the surrounding school districts and with respect to HACI, held as follows:

> "As previously found, the location by HACI of all of its public housing facilities within IPS territory has had a major influence toward keeping black students confined within IPS, while at the same time keeping the suburban school systems virtually all white. Such conduct should and will be enjoined, so as to prohibit HACI from locating any additional public housing units within the boundaries of IPS. Furthermore, HACI should and will be enjoined from reopening Lockfield Gardens, a public housing project which is now vacant, to tenants other than the elderly." (SA 46)

Simultaneously with the filing of its Memorandum of Decision on August 1, 1975, the District Court entered judgment against HACI and enjoined HACI "from constructing or in any manner acquiring any structure within the area served by IPS for the purpose of offering the same, or parts or portions thereof, for rent as a family type public housing project, and from renovating the presently owned all-black housing project called Lockefield Gardens.

This opinion was affirmed by the Court of Appeals in an opinion to which Judge Tone dissented in 541 F. 2d 1121 (1976) (SA 1). On appeals and petitions for certiorari, this Court vacated and remanded the Court of Appeals judgment for further consideration in the light of *Washington* v. *Davis*,

426 U. S. 229 (1976), and *Village of Arlington Heights* v. *Metropolitan Development Corporation*, 429 U. S. 252 (1977).

Following this remand, the Court of Appeals rendered three opinions—a principal opinion by Judge Swygert in parts I and II of which Judge Fairchild concurred, and a dissenting opinion by Judge Tone (573 F. 2d 400; JA 54-83). The plurality determined that discriminatory intent, the issue on remand, could not be determined as a matter of law from the existing record and ordered the case remanded for further consideration of intent by the District Court (573 F. 2d 414 (1978); JA 79). The plurality portions of Judge Swygert's opinion (*e.g.*, JA 61) rely on certain findings in his pre-remand and vacated 1976 opinion, which are also relied on by the Court of Appeals majority opinion here in issue (JA 2, 7).

On the basis of the 1975 record, without hearing further evidence, the District Court then found the requisite discriminatory intent and reinstated its 1975 judgments (456 F. Supp. 183 (1978); JA 84). By a subsequent remand order, the Court of Appeals directed the District Court to hold a hearing on remedy. This hearing, held in 1978, also resulted in findings of fact, relevant to the question of violation, set out in an unreported opinion (JA 101 *et seq.*)

By this 1979 opinion and accompanying judgment, the District Court reaffirmed its 1978 opinion, modified only to decrease the number of IPS black students transferred to Lawrence because of its rapidly increasing black enrollment, and to require certain ancillary actions by the defendants relating to such matters as "in-service" training.

On appeal, this judgment was affirmed by the Court of Appeals, by a majority opinion and order with a dissenting opinion by Judge Tone, both as yet unreported, dated April 29, 1980, to which this petition relates. An analysis of the majority Court of Appeals opinion described above depends on the pertinent facts found by the District Court and the Court of Appeals. A statement of these facts follows.

Statement of Facts

HACI is an independent civil city authority. In the period prior to 1969, it had jurisdiction to locate public housing projects within the boundaries of the City of Indianapolis and in an area five miles beyond these boundaries (Maj. Op., JA 13). During this period it erected ten public housing projects designed for families other than the elderly, all in the City of Indianapolis (Maj. Op., JA 13). A majority of these were located in white demographic areas (Maj. Op., JA 14), and were integrative to the extent that black families tended to locate in their vicinity (Maj. Op., JA 22). All locations were approved both by HUD and HACI.

Many of the sites for public housing were chosen by the developers as "turn key" projects—a project where the site is initially selected by the developer, the project built, and turned over as a completed project to HACI (Dis. Op., JA 45). Some of the sites were recommended by a Mayor's task force composed of members of the staff from the Metropolitan Plan Commission, the Uni-Gov predecessor to The Metropolitan Development Commission (*Ibid.*). This task force established a strategy for selecting sites for all types of multi-family dwellings in each section of the County (*Ibid.*). In fact, a substantial amount of federal subsidized housing now occupied by black residents has been located outside the original Indianapolis boundaries (D. C. Op., JA 106-10).

In the course of its duties, the task force contacted the legislative and administrative officials of Marion County, the Commissioners and County Council, who stated they could not furnish the municipal services required by cooperation agreements with the Federal government (Dis. Op., JA 49). Such an agreement is essential to Federal financing and without such an agreement a public housing project cannot, as a financial matter, be constructed (Maj. Op., JA 15; Dis. Op., JA 47-8). Accordingly, the task force recommended no sites for public housing outside

the City of Indianapolis and all ten projects were located within its pre-Uni-Gov limits. Several projects were located adjacent to Indianapolis Civil City boundaries, and in some cases these boundaries were altered by annexation so that public housing projects then built would be located in the City of Indianapolis. (Maj. Op., JA 15).

As a result of compliance with HUD regulations, black persons constituted 98% of those applying for public housing project units. Although the projects opened with a lower percent black residents, they reflect this percentage on a permanent basis. Public housing projects are subject to substantial vacancy (19.2%) (D. C. Op., JA 106) and residents moving out of the projects returned to the original Indianapolis area. There were, in the 1978-79 school year, 2,586 school age children living in these projects (*Ibid.*). There was no evidence that the location of housing projects entirely within the City of Indianapolis increased the black population located there (Dis. Op., JA 51).

The findings against HACI have a long history.

The Court of Appeals in 1976, quoting the District Court, stated (SA 23):

> ". . . 'The location of these housing projects by instrumentalities of the State of Indiana has obviously tended to cause and to perpetuate the segregation of black pupils in IPS territory.' The record supports these findings and clearly shows a 'purposeful, racially discriminatory use of state housing.' *Milliken* v. *Bradley*, 418 U. S. 717, 755 (1974) (Stewart, J., concurring)."

There was no finding by the District Court and no evidence that the refusal to execute cooperation agreements or the location of the housing projects was racially motivated. It ruled out the necessity of such finding in stating the issues (see p. 6, *supra*), and its ultimate finding was stated purely in terms of effect. A fair reading of this Court of Appeals opinion, despite the language set out above, is to the same effect:

> "By locating its projects within IPS and in many cases near all black neighborhoods, the Housing Authority significantly contributed to the disparity in residential and school populations between the inner city and the suburbs. Its acts produced discriminatory effects both within IPS and the suburbs. . . ." (SA 24.)

Then again in its 1980 Opinion, the Court of Appeals affirmed the "location" finding of the District Court (JA 14). But this District Court finding was not an independent finding but was based on the statement that the "Court of Appeals has already agreed that the record shows 'purposeful, racially discriminatory use of state housing' " (JA 94). This 1976 Court of Appeals quotation is not a finding ever made by either the District Court or the Court of Appeals, but is this quotation of Justice Stewart (see p. 10 *supra*). This 1976 conclusion by the Court of Appeals is based solely, again, on a 1975 "location" finding by the District Court that "The location of these housing projects by instrumentalities of the State of Indiana, has obviously tended to cause and to perpetuate the segregation of black pupils in IPS territory" (SA 39).

REASON FOR ALLOWANCE OF THE WRIT

The Court of Appeals majority's opinion squarely conflicts with and disregards *Washington* v. *Davis, supra,* and *Village of Arlington Heights* v. *Metropolitan Development Corporation, supra,* by predicating a constitutional violation solely on the racial impact of the acts of HACI officials adopted and taken without a racially discriminatory intent or purpose, rendering inoperative in the IPS area housing policies established by the Congress and implemented by HUD regulations.

As long ago as its 1978 Opinion, the Court of Appeals recognized that "neither the Government nor the intervening Plaintiff offered any evidence showing a racially discriminatory purpose" and cited with approval the statement of Judge Tone in his 1976

dissenting opinion that "the (plaintiffs) do not argue that the evidence shows discriminatory purpose" (Maj. Op. JA 71).

The majority opinion's predicate for measuring the constitutional validity of the location of public housing units solely within IPS was that their location contributed to racial disparity in school enrollment between IPS and the surrounding school districts.

That the Court of Appeals in 1980 is still relying solely on the "impact" of the location of these public housing units is frankly admitted by its statement, "the choice of location of these projects had an impact on school enrollments by keeping black students within IPS and out of the surrounding school districts" (Maj. Op., JA 13). The Court of Appeals, again, states that "for the purpose of this appeal, the critical finding by the district court was the one quoted above, the finding of an invidious purpose to keep blacks within pre-Uni-Gov Indianapolis and IPS, and to keep the territory of the added suburban defendants segregated for the use of whites only" (Maj. Op. JA 14).

The majority opinion states the District Court finding of racially discriminatory intent is based "on the natural and foreseeable results of the site selection practices" and "on the absence of convincing non-racial justification for HACI's failure to locate projects outside of IPS" (Maj. Op., JA 14; See D. C. Op. JA 94).

The finding by the District Court on "foreseeable results" is based upon a quotation from *Oliver* v. *Michigan State Board of Education*, 508 F. 2d 178 (6 Cir. 1974) (JA 94). This *Oliver* language is clearly not the proper constitutional test to determine discriminatory intent. *Dayton Bd. of Ed.* v. *Brinkman II*, ... U. S. ....., 61 L. Ed. 2d 720, 732-3 n. 9 (1979).

HACI's inability to locate public housing projects outside the City of Indianapolis was its inability to enter into a cooperation agreement with the County Council and the County Commis-

sioners, the governing officials in the County outside incorporated areas.[3] The question is not whether the siting was rational from HACI's standpoint but whether the County was willing to absorb the costs, including a loss of taxes, and was able to perform the services required under a cooperation agreement.[4] The task force that assisted HACI in selecting sites approached the county officials about the possibility of placing projects in their jurisdiction (541 F. 2d 1216; SA 11), but their response was negative since they could not provide the municipal services required by federal law (Dis. Op., JA 49, n. 44).

The unwillingness of suburban officials to enter into cooperation agreements was not racially motivated (Dis. Op. JA 50). This reluctance might well have been because the suburban officials, in the 1960's, could not furnish the necessary governmental services. The undisputed evidence to this effect is summarized by Judge Tone (Dis. Op., JA 49-50, n. 44 and 45). This evidence is answered only by the finding of the District Court in its 1976 opinion that some of these necessary services such as public transportation "could have been extended to areas of demonstrated need" (SA 11) and that other services such as food stamp distribution offices, sewage facilities, and police and fire protection "could have been obtained from the City" (SA 12). That the eventual possibility of such services did not satisfy HUD guidelines and that public transportation still was not available in these suburban areas seven years later, was noted by Judge Tone in 1980 (Dis. Op., JA 50).

The conclusion in the majority opinion that HACI made "no serious attempts" to obtain a cooperation agreement with Marion County suburban public officials (JA 16) is undercut by the District Court in its 1976 Opinion which states "The City of

3. The majority opinion recognizes such an agreement is a prerequisite to federal financial aid, the sole method by which a public housing project can be financed (Maj. Op., JA 15, n. 19).

4. *See,* the extensive discussion of these obligations in the dissenting opinion, JA 46-47, n. 38 and JA 48, n. 40).

Indianapolis entered into a cooperation agreement with the Housing Authority but no other governmental entity in Marion County did so, even though the Housing Authority approached the county commissioners about an agreement" (SA 11). But even if the manner in which HACI "approached" the county commissioners was not "serious" (?), HACI was under no obligation to attempt to get a cooperation agreement with county officials.

The location of public housing projects inside Richmond and not in the county areas surrounding Richmond did not justify interdistrict relief affecting housing, even though the Richmond Housing Authority had power to construct public housing with the approval of suburban officials. "Both counties have stated their opposition to public housing within their borders. Richmond officials, therefore, thought it a vain act to seek their permission" (*Bradley* v. *School Board of Richmond* (1972), 338 F. Supp. 67, 220, *reversed* 462 F. 2d 1058, *affirmed* by an equally divided court, 412 U. S. 92 (1973)).

Furthermore, the holding in *Gautreaux* v. *Romney,* 448 F. 2d 531, 538 (7th Cir. 1971), that the Chicago Housing Authority acted unconstitutionally when it chose segregated housing sites in Chicago because of the resistance of the community and the Chicago City Council, was expressly disapproved because of lack of racial motivation or intent, in *Washington* v. *Davis, supra,* 426 U. S. at 244-5, footnote 12.

The Court of Appeals, by predicating a violation of the Fourteenth Amendment right of minority students in IPS to attend a unitary school system on the inability of HACI to locate outside the boundaries of IPS because the suburban officials had not entered into a cooperation agreement with HACI conflicts with the decision of this Court in *James* v. *Valtierra,* 402 U. S. 137 (1971). In that case, this Court established that the refusal of a civil government under these circumstances was not a Fourteenth Amendment violation with respect to the location of public housing within a jurisdiction. Yet such location of public

housing is the essence of the purported Constitutional violation against the rights of minority children here involved.

There is no finding that the black population of IPS would have been smaller had no housing projects been built in Indianapolis, and no finding that blacks eligible for public housing and needing the kinds of local services not generally available outside of IPS would have occupied public housing projects outside of IPS. Placement of low-income housing in all-white neighborhoods outside of IPS may not significantly affect the area's racial composition until the low-income housing needs of whites in the vicinity have been met. Tenancy in low-income housing units tends to take on the racial character of the areas in which they are located. See Ledbetter, *Public Housing—A Social Experiment Seeks Acceptance,* 32 Law and Contemporary Problems 490, 503 (1967), which states, "If the units are built in an all-white neighborhood, the project will probably be all white." In this case, black residents moving out of the public housing projects located in predominately white areas returned to the black inner city areas. Further, even assuming that blacks could have been transplanted to suburban public housing projects, the District Court did not find, and there is no evidence, that the IPS black population is larger because public housing was provided—that there would have been any lesser black population in IPS in the absence of public housing.

Such a "cause and effect" finding is the essence of a finding of a constitutional violation, and is missing here. Specifically, it must be shown that "racially discriminatory acts . . . have been a substantial cause of inter-district segregation." *Milliken, supra,* 418 U. S. at 745. See also *Swann* v. *Charlotte Mecklenburg Bd. of Ed.,* 402 U. S. 1 (1972) at 16.

CONCLUSION

WHEREFORE, the Petitioner respectfully prays that a writ of certiorari be granted.

Respectfully submitted,

WILLIAM M. EVANS,
ROBERT P. KASSING,
BOSE, MCKINNEY & EVANS,
1100 First Federal Building,
Indianapolis, Indiana 46204,
Attorneys for Petitioner The Housing Authority of the City of Indianapolis, Indiana.

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99

see 80

129